

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FOREST L. FATE, SR.,

Plaintiff,

-against-

JOHN; HARBOR AUTO CENTER,

Defendants.

1:18-CV-3493 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, United States District Judge:

By order dated March 23, 2020, the Court vacated its December 14, 2018 judgment. (ECF 16.) The Court also decided to hold this action in abeyance pending a determination in another of Plaintiff's actions, *Fate v. New York*, 1:19-CV-4107 ("*Fate I*"), as to whether, under the Second Circuit's decision in *Escalera v. Samaritan Vill.*, 938 F.3d 380, 382-84 (2d Cir. 2019), Plaintiff had accumulated three or more "strikes" under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g). (*Id.*)

In an order in *Fate I* dated March 26, 2021, District Judge Cathy Seibel of this court determined that Plaintiff had accumulated four strikes, and was therefore barred under the PLRA from proceeding *in forma pauperis* ("IFP") in federal civil actions while he is a prisoner. *See Fate I*, ECF 7:19-CV-4107, 31, at 6-12 (S.D.N.Y. Mar. 26, 2021). Plaintiff, who is presently incarcerated in the Five Points Correctional Facility, and who filed his complaint for this action while he was held in the Orange County Jail, accumulated all of those strikes before he filed the complaint for this action. (*See id.*). Plaintiff alleges no facts showing why he should be allowed to proceed IFP in this action under the PLRA's exception to its filing bar. Accordingly, because Plaintiff is barred under the PLRA, the Court denies Plaintiff's IFP application and dismisses this action without prejudice. *See* 28 U.S.C. § 1915(g).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962)

SO ORDERED.

Dated: April 29, 2021  
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON  
United States District Judge